

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

RICHARD TUBBY,

Plaintiff,

v.

OFFICER DAVID ALLEN,

Defendant.

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Case No. 6:16-CV-972-JDK-KNM

**ORDER ADOPTING REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Plaintiff Richard Tubby, a former prisoner previously confined in the Texas prison system, proceeding with counsel, filed the above-styled and numbered civil lawsuit. After Defendant David Allen failed to appear for his deposition twice and refused to respond to his attorney's telephone calls, emails, and correspondence, Plaintiff filed a motion for default and sanctions against Defendant Allen on March 28, 2019. Docket No. 83. Plaintiff seeks to strike Defendant Allen's answer and affirmative defenses, and have a default entered against him. Defendant Allen did not respond.

The motion was referred to United States Magistrate Judge K. Nicole Mitchell, who issued a Report and Recommendation concluding that Plaintiff's motion for default and sanctions (Docket No. 83) should be granted (Docket No. 86). The Magistrate Judge held that Defendant Allen's default and discovery violations were willful because he refused to "answer counsel's calls or mail," failed to appear at his Court-ordered deposition, refused to "accept the Court's Orders through the U.S. Postal Service," and refused to "respond to the Plaintiff's motion for sanctions and entry of default." Docket No. 86 at 5–8. The Court's docket reflects that the Report and

Recommendation was mailed to Defendant Allen at his last known address on April 15, 2019, by regular mail and certified mail, return receipt requested. As of the date of this Order, Defendant Allen has not responded to the Motion for Default and Sanctions (Docket No. 83) or to the Report and Recommendation. (Docket No. 86).

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of the motion, has been presented for consideration, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and adopts same as the findings and conclusions of the court. It is accordingly


ORDERED that the Report and Recommendation (Docket No. 86) is **ADOPTED**. It is further

ORDERED that Plaintiff Richard Tubby's motion for default and sanctions (Docket No. 83) is **GRANTED**. It is further

ORDERED that the Clerk of the Court shall strike Defendant David Allen's Answer (Docket No. 33). It is further

ORDERED that the Clerk of the Court shall enter a default against Defendant David Allen.

So **ORDERED** and **SIGNED** this **12th** day of **June, 2019**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE